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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,492	01/02/2002	Raymond Lee Call II	DANAI-125A	5529
7663	7590	09/20/2005	EXAMINER	
STETINA BRUNDA GARRED & BRUCKER 75 ENTERPRISE, SUITE 250 ALISO VIEJO, CA 92656			BRINEY III, WALTER F	
			ART UNIT	PAPER NUMBER
			2646	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/038,492

Applicant(s)

CALL ET AL.

Examiner

Walter F. Briney III

Art Unit

2646

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 1, 2, 4-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (US Patent 6,792,125) in view of Blattner (US Patent 1,965,405).**

Claim 1 is limited to a *three-way speaker system having a translatable midrange/tweeter module*. David discloses a pivotable speaker mounting apparatus. See Abstract. In particular, the pivotable speaker comprises a tweeter module (figure 6, element 26). See column 1, lines 6-11. With particular reference to claim 1 of the instant application, David discloses a speaker frame (20) that is clearly symmetrical about a central axis. See figures 5 and 6. David discloses a *cylindrical* post (36') mounted in the opening (74) of *bass speaker* (70) that holds *tweeter* (26) in place against *yoke* (76). See column 5, lines 37-41. Clearly, the *compression module* (36') is disposed along the *central speaker axis*. Also, it is clear that *yoke* or *baffle* (76) is *annular* and its partially spherical inner surface (24') enables the outer surface of element (32) to rotate within. Also, as seen in figure 5, the *yoke* (76) is secured to the *speaker frame* (20) by way of *compression module* (36'). As noted above, the tweeter (26) comprises only a tweeter speaker, yet no midrange speaker as recited. Therefore,

David anticipates all limitations of the claim with the exception of a midrange/tweeter module comprising a midrange speaker and a separate tweeter speaker.

As a first matter, David clearly discloses that the invention described therein is neither limited to tweeter embodiments nor single translatable speakers. See column 5, lines 42-51. Now considering the acoustic device of Blattner, it is noted that circular speaker structures, like those used by David, have a limited range of sound reproduction over certain frequencies due to their fixed size. To avoid this deficiency, Blattner discloses using a combination of midrange and tweeter speakers in conjunction with a woofer. See figure 4; page 1, lines 1-48; and page 2, lines 99-120. It would have been obvious to add a midrange speaker to the tweeter assembly mounted upon baffle (76) of David for the purpose of further improving frequency directivity.

Claim 2 is limited to *the system as recited in claim 1*, as covered by David in view of Blattner. As is seen in figures 5 and 6, the *speaker frame* (20) comprises a *cylindrical outer surface*. Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 4 is limited to *the system as recited in claim 1*, as covered by David in view of Blattner. As seen in figure 6, the compression module includes *cylindrical base* (72), *spring* (40) that fits over post (38), and *cylindrical load member* (32), which rotates within the cup opening of module (36'). Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 5 is limited to *the system as recited in claim 1*, as covered by David in view of Blattner. As seen in figure 6, *tweeter module* (26) comprises a *speaker set*

housed within an outer shell (i.e. *housing*). Alternatively, *tweeter module* (26) can be considered as a *speaker set* residing within *housing* (32). Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 6 is limited to *the system as recited in claim 5*, as covered by David in view of Blattner. In the sense that unit (32) is the aforementioned *housing* component of the *tweeter module*, it is clear that the outer surface is *concave*, and *abuts* with the inner surface of *compression member* (36'). Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 7 is limited to *the system as recited in claim 5*, as covered by David in view of Blattner. In the sense that unit (32) is the aforementioned *housing* component of the *tweeter module*, it is clear that its outer surface is curved, thus providing *sliding engagement* with the *yoke* (76). Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 8 is limited to *the system as recited in claim 7*, as covered by David in view of Blattner. David discloses that the inner surface (24') of *yoke* (76) is partially spherical (i.e. *curved inner sidewalls*), thus providing sliding engagement with the *tweeter module*. See column 5, lines 8-11. Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 9 is limited to *the system as recited in claim 8*, as covered by David in view of Blattner. While the dimensions are not explicitly stated, it is inherent that for *yoke* (76) to retain a compressive engagement with *housing* (32), while enabling a portion of the *housing* (32) to pass through the *yoke* (76), its lower walls must be larger

than the *housing walls* and its upper walls must be smaller than the *housing walls*. As such, David implicitly states the inherent relative dimensions of the inner surface (24') (i.e. a *first end defining an aperture having a diameter less than that of the housing sidewalls, and a second end defining an aperture having a diameter greater than that of the housing sidewalls*). Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 10 is limited to *the system as recited in claim 1*, as covered by David in view of Blattner. As clearly seen from figures 3 and 4 of Blattner, the midrange speaker (22,26) is to be located coaxially with the tweeter speaker (23,27,28), both of which are located coaxially with respect to the central speaker axis of the speaker basket (70) of David. Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 11 is limited to *the system as recited in claim 10*, as covered by David in view of Blattner. Clearly seen from figure 4 of Blattner, the midrange speaker (22,26) is located between (i.e. *intermediate*) the tweeter (23,27,28) and the *bass speaker* (i.e. 21,25). Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 12 is limited to *the system as recited in claim 6*, as covered by David in view of Blattner. As seen from figure 6, the *housing component's (32) rear surface portion* rests within the *compression member (36')* such that it the *rear surface portion* is formed within the *lip* defined by the opening that the *housing component (32)* is inserted through. Therefore, David in view of Blattner makes obvious all limitations of the claim.

Claim 14 is limited to *the system as recited in claim 8*, as covered by David in view of Blattner. As already noted in the rejections of claims 7 and 8, the shaped walls

of both the housing (32) and annular support member (76) are shaped for sliding translation. Therefore, David in view of Blattner makes obvious all limitations of the claim.

2. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over David in view of Blattner and further in view of Pfister (US Patent 6,161,262).

Claim 3 is limited to *the system as recited in claim 1*, as covered by David in view of Blattner. David indicates that *compression member (36')* is resiliently held in place with the main speaker (70) through a *frictional engagement*. See column 5, lines 1-4. However, David in view of Blattner does not specify what type of frictional engagement means is necessary, furthermore, such a general statement does not indicate that post (72) comprises a *slotted outer surface*.

Pfister teaches a clamp assembly. See Abstract. In general, figure 7 depicts an elongated post (22) that corresponds to post (72) of David. Post (22) is frictionally held in place within opening (112) of block member (20), which corresponds to opening (74) of David, by the slotted screw arrangement (114) along the outer surface of post (22). It would have been obvious to one of ordinary skill in the art at the time of the invention to mount the elongated post (72) of David within the speaker opening (74) using the slotted screw arrangement as taught by Pfister because David in view of Blattner suggests using a frictional engagement, but does not provide an enabling disclosure as to how one of ordinary skill in the art would provide such an engagement.

Allowable Subject Matter

The following is a statement of reasons for the indication of allowable subject matter:

3. **Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.**

Claim 13 is limited to *the system as recited in claim 12*, as covered by David in view of Blattner. Those elements (45 and the other portions of the inner wall) of the compression module (36') that contact the concave rear surface of the housing component simply do not travel along the rear surface. Specifically, these elements are fixed and cannot be said to travel along the rear surface. Thus, claim 13 is allowable over David in view of Blattner.

Response to Arguments

Applicant's arguments with respect to claims 1-5 and 7-14 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments with respect to claim 6 have been fully considered but they are not persuasive.

With respect to claim 6, the applicant alleges on pages 5 and 6 of the current response that the side portion of the housing of David is concave while the rear portion appears to be planar; the examiner respectfully disagrees. In particular, the recitation of a rear surface clearly holds no weight in the absence of a recitation concerning a front surface. Within the current claim scope there is no recitation of a front surface, which indicates that the rear surface corresponds to any surface performing its function (i.e. a

concave surface for abutting engagement with the compression member). In this way, the alleged "side portion" of David corresponds to the "rear surface portion" as claimed. As all of the applicant's arguments concerning this claim have been shown to be either moot or unpersuasive, the rejection of this claim is maintained.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter F. Briney III whose telephone number is 571-272-7513. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on 571-272-7564. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SINH TRAN
SUPERVISORY PATENT EXAMINER

WFB
9/13/05